UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,477	03/28/2005	Hiromichi Minakawa	267265US0PCT	8279

22850 7590 04/08/2008

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER	
LEFF, STEVEN N	

ART UNIT	PAPER NUMBER
1794	

NOTIFICATION DATE	DELIVERY MODE
04/08/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

Office Action Summary	Application No.	Applicant(s)	
	10/529,477	MINAKAWA, HIROMICHI	
	Examiner	Art Unit	
	STEVEN LEFF	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 December 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-10* is/are pending in the application.

4a) Of the above claim(s) *4-10* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *12/17/07, 3/28/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1, and 3 drawn to a method for microwave cooking.

Group II, claim(s) 4-6, and 10 drawn to a seasoning.

Group III, claims 7-9 a food product.

The special technical feature linking the three inventions is that all three groups are comprised of at least one organic acid selected from the group consisting of acetic acid, citric acid, succinic acid, malic acid, lactic acid, butric acid and tartaric acid, a starch, a thermosetting protein and an edible fat and oil, where the combination as taught does not provide a contribution over the prior art as evidenced by Prasad et al. (WO 0065937). In addition, the product and seasoning as claimed can be made without microwave heating but other forms of heating such as for example, IR, hot water and steam, and where the process as claimed and seasoning can be used to make a product made from cooked foods as opposed to raw foods.

During a telephone conversation with Mr. Jacob Doughty on February 7th, 2008 a provisional election was made without traverse to prosecute the invention of a method for microwave cooking a raw meat or a raw marine product i.e. claims 1 and 3. Affirmation of this election must be made by applicant in replying to this Office action. Claims 4-10 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn

process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder**. Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claims 1 and 3are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- With respect to claim 1 the recited format does not comply with accepted U.S. Patent practice with regard to the recitation of Markush grouping of claim elements. Phrases using "comprising" should recite elements in the alternative (i.e. "comprising A, B, C or D"), whereas closed sets ("consisting of") should recite elements as "selected from the group consisting of A, B, C and D." In the instant case the phrase "preparing a seasoning comprising at least one organic acid selected from the group consisting of acetic acid, citric acid, succinic acid, malic acid, lactic acid, butric acid and tartaric acid, a starch, a thermosetting protein and an edible fat and oil," is rejected as it is unclear since the phrase recites both forms of language and thus it is unclear if the recitation of "and tartaric acid, a starch, a thermosetting protein and an edible fat and oil" is with respect to the alternative or as "selected from the group consisting of A, B, C and D."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Prasad et al. (WO 00/65937).

  With respect to claims 1 and 3 Prasad et al. teach a method for microwave cooking (page 4 line 16). More specifically, Prasad et al. teach preparing a seasoning (page 4 line 8) comprising at least one organic acid selected from the group consisting of acetic acid, citric acid (page 16 line 18), succinic acid, malic acid, lactic acid, butric acid and tartaric acid, a starch (page 17 line 27), a thermosetting protein (page 18 line 1) and an edible fat and oil (page 18 line 19, page 9 lines 14-22), applying the seasoning to a raw meat or raw fish (page 14 lines 16-18), and subjecting the seasoned product to microwave heating (page 4 line 16). Prasad et al. continue by teaching that the seasoning further comprises a melanoidin (page 8 line 28- line 2 page 9).

- Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Wilson (5008124).

With respect to claim 1 Wilson teaches a method for microwave cooking (col. 8 lines 28-29). More specifically, Wilson teaches preparing a seasoning (col. 7 lines 29-33) comprising at least one organic acid selected from the group consisting of acetic acid, citric acid (col. 7 line 55), succinic acid, malic acid, lactic acid, butric acid and tartaric acid, a starch (col. 7 line 5), the thermosetting protein rice (col. 7 lines 6-19) and an edible fat or oil (col. 7 line 58), applying the seasoning to a raw meat or raw fish (col. 7 line 32), and subjecting the seasoned product to microwave heating (col. 8 lines 28-29).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure 5089278, JP 02-20244, JP 03-12783 and 3524747 which teach applying a seasoning however 5089278, JP 02-20244, and JP 03-12783 do not teach a raw meat, and 3524747 does not teach the addition of a fat/oil.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached at (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/
Primary Examiner, Art Unit 1794

/S. L./
Examiner, Art Unit 1794